FILED
JUL 25 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

NO. 86-1884

JAMES A. GORDON, JR.,
Petitioner,

vs.

WILLIAM W. DAVIS, et al,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO

THE NINTH CIRCUIT COURT OF APPEALS

PETITIONER'S REPLY

JAMES A. GORDON, JR.
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A brief reply is warranted to correct several assertions contained in the Memorandum in Opposition.

1. Respondent's memorandum fails to recognize the fact that the resignation of one of petitioner's former partners was not made public by the State Bar until November 1984, which by due diligence could have discovered in time to move for a new trial, or review by this court pursuant to a Writ of Certiorari. The resignation was a result of hearings before the State Bar Court, during the time of petitioner's hearings and such information was confidential, as to petitioner, pursuant to State Bar Rule of Procedure, Rule 221.

As an alternative to review, by the District Court, petitioner offered the Court of Appeals the right of relief by a Independent Action pursuant to Section 60(b) of the Federal Rules of Civil

Procedure, which is a proper procedure as to Newly discovered Evidence.

2. Petitioner's action was filed seven (7) months after the publication of his former partner's resignation and within the three (3) year limitation for a 42 USC §1983 action.

3. This "so called" civil rights action, 42 USC §1983, is supported by this Court's opinions in Monroe v. Pape (1961) 365 U.S. 167, Lugar v. Edmondson Oil Co. (1982) 457 U.S. 922 and Scheuer v. Rhodes (1974) 416 U.S. 232, moreover, the Ninth Circuit in 1962 in Marshall v. Sawyer, 301 F 2d 639 at 646, set down the requirements for a sufficient complaint under Section 1983, as follows:

> "The only elements which need to be present in order to establish a claim for damages under the Civil Rights Act are that the conduct complained of was engaged in under color of state law, and that such conduct subjected the plaintiff to the deprivation of rights, privileges, or immunities secured by the Constitution of the United States."

These requirements were cited in Roberts v. Acres, 495 F 2d 57 at 59 (7th Circuit, 1974) as for the sufficiency of the complaint under Section 1983.

Monroe v. Pape (supra) also ruled that to be compensable under Section 1983, an act need not have been committed with "a specific intent to deprive a person of a federal right," and that a civil remecy, Section 1983 "should be read against the background of tort liability that makes a man responsible for the natural consequences of his action." (365 U.S. at 187)

4. The respondent merely cites quasi-judicial immunity as a bar to the action as against Davis and Scott and does not contest that the cases cited in the petition, by this court and the Ninth Circuit, are without merit. Davis and Scott must therefore demonstrate their entitlement to the immunity.

5. The memorandum in opposition stated the Ninth Circuit's recognition of other grounds for dismissal, which were not stated, and it leaves us to speculation.

The affirmative defenses of Res Judicata, including the thories of issue and claim preclusion and/or direct or collateral estoppel, and the Statute of Limitations, would not be sufficient grounds, because:

Res Judicata only applies when the issues were actually litigated or available for litigation, but not raised. Migra v. Warren City School Dist. Bd. of Ed. (1984) 465 U.S. 75; and does not apply where the party did not have a full and fair opportunity to litigate the claim or issue, decided by the first court, Haring v. Prosise (1983) 462 U.S. 306.

The Federal Courts accept the state's interpretation of its own statutes of limitations, Smith v. Cremins, 308 F 2d 187

(9th Circuit, 1962); and California classifies a Section 1983 action under California Code of Civil Procedure §338(1) as having a limitation period of three (3) years. The original complaint filed by petitioner was within time and subsequently amended.

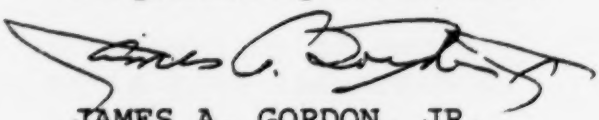
Neither affirmative defense would apply or operate in this matter.

CONCLUSION

The petition for certiorari should therefore be granted. The error of the Court of Appeals for the Ninth Circuit is clear, and petitioner believes the appropriate relief would be the summary reversal of the decision.

DATED: July 18, 1987

Respectfully submitted,



JAMES A. GORDON, JR.
Petitioner in Pro Se

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AFFIDAVIT OF SERVICE

I declare that on the 20th day of July 1987, I served three copies each of the within Petitioner's Reply by enclosing them in sealed envelopes, postage prepaid, in the U.S. Mail at Los Angeles, CA, addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California on the 20th day of July 1987.

JAMES A. GORDON, JR.
Petitioner in Pro Se